

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 2,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 2000-035
)	
JEFFERSON COUNTY FLEET)	
SVS DIVISION,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994. This matter arises from the election petition of the International Union of Operating Engineers, Local 2 (hereinafter referred to as the Union) to represent certain employees of Jefferson County (hereinafter referred to as the County). The Union seeks to represent a bargaining unit consisting of all Fleet Services Division employees excluding management employees and supervisors. The County objects to the inclusion of the Administrative Clerk III position in the bargaining unit on the grounds that the position does not share a community of interest with the other positions in the proposed bargaining unit and that the position is a confidential employee position. A hearing on the matter was held on March 28, 2000 in Hillsboro, Missouri, at which representatives of the Union and the County were present. The case was heard by State Board of Mediation Chairman John A. Birch, Employee Member LeRoy Kraemer, and Employer Member Lois VanderWaerdt. At the hearing, the parties were given full opportunity to present evidence and make their arguments. The parties were also given an

opportunity to file briefs. However, neither party chose to file a brief in this case. After a careful review of the evidence and arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The County has a Public Works Department. William Koehrer is the Director of Public Works and as such, is responsible for overseeing the operation of the Public Works Department. Mr. Koehrer's office is located in the Courthouse Annex Building. The Public Works Department has four Divisions: Administrative/Technical Division, Highway Division, Facility Services Division, and Fleet Services Division.

The Fleet Services Division is located in the Fleet Services Garage, 355 Elm Street, Hillsboro, Missouri. Thomas Redman is the Manager of the Fleet Services Division and oversees the day-to-day management of the Division. Mr. Redman reports directly to the Director of Public Works, William Koehrer. Prior to 1997, Mr. Redman's office was located in the Courthouse Annex Building. However, in 1997, Mr. Redman decided that the Division personnel needed closer supervision. Therefore, he moved his office to the Fleet Services Garage. There are six additional employee positions within the Fleet Services Division: one Chief Mechanic, one Lead Mechanic, two Mechanics, one Electronics Technician, and one Administrative Clerk III. At the time of the hearing, the Electronic Technician position was vacant.

The Fleet Services Division repairs and maintains fleet vehicles for the Sheriff's Department, the Juvenile Division, Courthouse Maintenance, and the Public Works Department. Computer records on all vehicles are maintained on the Division's RTA Fleet Management System computer program. When a vehicle is brought in for regular monthly maintenance or for an unscheduled repair, a work order is filled out. Upon

completion of the required maintenance or repair, the mechanic will write on the work order the work performed, the parts used, and the time required to complete the work. The Mechanic then gives the completed work order to the Administrative Clerk III, Brenda Potratz. Ms. Potratz enters the work order information on the Division's computer system and files the completed work order.

When the Sheriff's Department, the Juvenile Division, Courthouse Maintenance, or the Public Works Department receives a new vehicle, the Fleet Services Division prepares the new vehicle for fleet service. Ms. Potratz puts the identification number on the vehicle, assigns the vehicle a monthly maintenance date, and enters the vehicle on the Division's monthly vehicle maintenance schedule. Ms. Potratz also ensures that a County fuel card and insurance card are placed in the vehicle. Furthermore, when appropriate, the mechanics install a stripping package, a police two-way radio, a siren, and a light bar on the new vehicle.

Fleet Service Division employees are routinely required to pick up new vehicles at automobile dealerships or to deliver vehicles to particular locations. In the past, Ms. Potratz has been asked to pick up new vehicles at automobile dealerships. Additionally, Ms. Potratz signs for parts delivered to the Fleet Services Garage by the United Parcel Service. Repair parts will occasionally have to be obtained from automobile dealerships. Mr. Redman will direct the Lead Mechanic, Tom Becker, to either stop on his way home or stop on his way to work and pick up the required parts. Mr. Becker is permitted either to leave work early or to come in late on these days. Since Ms. Potratz and Mr. Becker car pool together, Ms. Potratz will accompany Mr. Becker to the automobile dealership to pick up the necessary repair parts.

Ms. Potratz performs clerical work for Mr. Redman including typing correspondence and memorandum, and faxing materials as directed. She types up

employee disciplinary actions on the Division's computer form. Ms. Potratz also tracks annual leave, sick days, and time sheets for Division personnel. Additionally, Ms. Potratz enters work order and vehicle information into the Division's RTA Fleet Management System computer program and prints out required reports. She creates and maintains the Division's monthly vehicle maintenance schedule. Additionally, she orders fuel cards for fleet vehicles and County employees. She also cancels the fuel cards of employees that leave County employment. Prior to 1997, Ms. Potratz's position was physically located in the Courthouse Annex Building. However, in 1997, when Mr. Redman moved his office to the Fleet Services Garage, Ms. Potratz's position was also moved to the Fleet Services Garage.

In the performance of her duties, Ms. Potratz has access to information that the County considers confidential. She has access to the personnel files of Division employees. She also has access to Division workers' compensation claims information. Ms. Potratz has access to information concerning employee discipline prior to such information being conveyed to the employee. Additionally, she types memorandum concerning employee discipline when requested. Ms. Potratz also has knowledge of internal employee investigations. These investigations concern such matters as employee theft, employee drug use, and employees drinking on the job. Mr. Redman conducts such investigations personally. There have been three such investigations in the past five years.

The Fleet Services Division services the vehicles used by County undercover drug law enforcement officers. All Division employees are familiar with the vehicles used by these undercover officers. However, only Mr. Redman and Ms. Potratz have access to the files concerning these vehicles. In addition, only Mr. Redman and Ms. Potratz know the passwords necessary to obtain confidential license plate numbers from

the Missouri Department of Revenue. During the time Ms. Potratz has worked for the Division, she has never improperly disclosed confidential information.

Since Ms. Potratz's position is located in the Fleet Services Garage, the working conditions for the Ms. Potratz, the Mechanics, and the Electronics Technician are identical. The garage is considerably rougher and dirtier than the Courthouse Annex Building. The standard dress code for the Fleet Services Garage is blue jeans. Ms. Potratz regularly wears blue jeans and sweatshirts. Additionally, Ms. Potratz and the Mechanics work the same hours. Prior to January 1, 2000, Ms. Potratz and the Mechanics worked a thirty-seven and one-half hour workweek. The working hours were from 8 a.m. to 4 p.m. with a half hour lunch break. On January 1, 2000, Mr. Redman changed the work hours for Ms. Potratz and the Mechanics. They currently work a forty-hour workweek. The working hours are from 7 a.m. to 4 p.m. with an hour lunch break.

Including Ms. Potratz, there are five Administrative Clerks within the Public Works Department.¹ Ms. Potratz is located in the Fleet Services Division Garage. The four remaining Administrative Clerks are located on the first floor of the Courthouse Annex Building. These four Administrative Clerks perform clerical work for other Public Works employees. They do not work on vehicles in any fashion and they do not order fuel cards. As the Courthouse Annex Building is considerably cleaner and nicer than the Fleet Services Garage, the dress code for the Administrative Clerks located in the Courthouse Annex Building is normal business attire for an office. In addition, the Administrative Clerks located in the Courthouse Annex Building continue to work a thirty-seven and one-half hour workweek.

It appears that all Fleet Service Division personnel are under the same County personnel policies. All of the Fleet Service Division job descriptions were rewritten in

¹ During the hearing, these positions were collectively referred to as Administrative Clerks. However, the positions have varying titles and duties.

1998 when the County adopted its current personnel policy. These job descriptions indicate that the Administrative Clerk III, the Mechanics, and the Electronics Technician are required to possess different job qualifications and job skills.

Finally, the County also has, as described in the hearing, a step program. Pay scales are apparently divided into steps. As employees advance in steps up the pay scales, they receive promotions. It is a natural progression.

CONCLUSIONS OF LAW

The Union seeks to represent a bargaining unit consisting of all Fleet Services Division employees excluding management employees and supervisors. The County objects to the inclusion of the Administrative Clerk III position in the bargaining unit on the grounds that the position does not share a community of interest with the other positions in the proposed bargaining unit and that the position is a confidential employee position. As the petitioning party, the Union has the burden of proving the appropriateness of the bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, 967 S.W.2d 696, 699 (Mo. App. W.D., 1998).

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 1994 which provides that "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest" nor does it set out any criteria

as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990) are:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

Additionally, in making a determination concerning appropriate bargaining unit, there is no requirement that the unit be the most appropriate or the best unit. *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990). The only requirement is that the unit be appropriate. *Id.* Furthermore, because of the Board's concern with over-fragmentation of a bargaining unit, the Board has consistently held that employees who possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their right to effective bargaining. *Sheet Metal Workers*

International Association Local No. 2 v. Central Missouri State University, Public Case No. 83-001 (SBM 1983).

An analysis of the factors in this case demonstrates that the Administrative Clerk III, Ms. Potratz, shares a clear and identifiable community of interest with the other Fleet Services Division employees and should therefore, be included in the proposed bargaining unit. Certainly, she shares a greater community of interest with the Fleet Service Division employees than she shares with the other Administrative Clerks in the Public Works Department.

Mr. Koehrer testified that the scale and manner of determining wages for the Administrative Clerk III and the Mechanics differ. However, there was no explanation on how they differ. The County has a step program in which pay scales are divided into steps. As an individual progresses up the pay scale steps, the individual receives promotions. This step program would appear to apply to all Fleet Service Division employees.

No evidence was presented as to employee benefits for any of the Fleet Service Division employees. However, there was evidence that the Administrative Clerk III and the Mechanics share the same work hours, dress code, and working conditions. In addition, Ms. Potratz has different work hours, dress code, and working conditions than do the other Administrative Clerks within the Public Works Department.

The Administrative Clerk III and the Mechanics all work with the vehicles. Ms. Potratz places the identification number on new vehicles, assigns the vehicle maintenance date, and places the vehicle on the monthly vehicle maintenance schedule. She also makes sure that the vehicle has a County fuel card and an insurance card. The Mechanics complete the process of preparing the new vehicle for fleet service. Additionally, Ms. Potratz and the Mechanics deliver and pick up vehicles.

Ms. Potratz signs for automobile parts delivered to the Fleet Services Garage by the United Parcel Service and she has accompanied the Lead Mechanic to automobile dealerships to pick up repair parts. Although Ms. Potratz does not perform general mechanics' work, she is part of the Fleet Services team that prepares and maintains the vehicles for fleet service.

The job qualifications and job skills of the Administrative Clerk III, the Mechanics, and the Electronic Technician differ. However, their job qualifications and job skills do not differ such they require separate representation to protect their right to effective bargaining. *See, Carpenters' District Council of Greater St. Louis, Local 795 v. St. Louis County, Public Works Department*, Public Case No. 98-027 (SBM 1999). The same bargaining representative should be able to effectively bargain for all Fleet Services Division employees.

All Fleet Service Division employees are located in the Fleet Services Garage. Therefore, they are in close geographic proximity. In addition, Ms. Potratz, the Administrative Clerk III, and the Mechanics interact daily. Ms. Potratz and the Mechanics are also part of an integrated process to prepare and maintain the vehicles for fleet service.

As the Manager of the Fleet Services Division, Thomas Redman has day-to-day supervision over all Division employees. Mr. Redman answers directly to the Director of Public Works. Therefore, all of the Fleet Services Division employees share common supervision. In addition, all Fleet Services Division employees appear to be under the same personnel policies and share a common relationship to the Department's administrative organization.

Finally, no evidence was presented concerning the extent of union organization or the history of collective bargaining within the County Public Works Department or the Fleet Services Division.

Based upon the foregoing, the Administrative Clerk III shares a clear and identifiable community of interest with the other Fleet Services Division employees and should be included in the proposed Division-wide bargaining unit.

Furthermore, the Administrative Clerk III is not a confidential employee within the meaning of the Missouri Public Sector Labor Law. Although confidential employees are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. *Belton NEA/Education Support Personnel v. Belton 124 School District*, Case No. R 94-002 (SBM 1994) The confidential exclusion protects an employer's right to conduct its labor relations through employees whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members. *Id.* This exclusion means that confidential employees cannot be included in any bargaining unit. *Id.*

To decide whether a particular employee is a confidential employee, the Board applies the labor nexus test. *Belton NEA/Education Support Personnel v. Belton 124 School District*, Case No. R 94-002 (SBM 1994). Under that legal standard, employees who act in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations are considered confidential employees. *Id.*

Under the NLRB's labor nexus test it is not sufficient to show that an employee has responsibility for protecting the confidences of management, or has access to confidential information. The test applies only to employees having access to advance information about

management's strategy and tactics in labor matters which might be used to the detriment of management.

Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA, 807 S.W.2d 63, 67 (Mo. banc 1991).

"The essential issue is whether the challenged employees have such a close relation to the district's management of labor relations that the district would be prejudiced by their inclusion in a bargaining unit with other employees." *Id.* at 68. The Board, with its specialized knowledge of employer-employee relations and "the dynamics of collective bargaining in the public sector," makes the determination of whether the employer may be prejudiced. *Id.*

In order to ascertain whether a person is a confidential employee, two determinations must be made under the labor nexus test. *Parkway Association Education Support Personnel, Local 902/MNEA v. Parkway School District*, Public Case No. R 88-025 at 16-17 (SBM 1989). First, the person for whom the employee works must initially be found to formulate, determine and effectuate labor relations policy. *Id.* Secondly, should the first test be met, the question shifts to the duties of the particular employee, in this case the Administrative Clerk III, whose inclusion in the bargaining unit is disputed. *Id.* To be excluded, the Administrative Clerk III must assist and act in a confidential capacity to a person who formulates, determines and effectuates labor relation policy. *Id.*

As for the first prong of the labor nexus test, the Administrative Clerk III works for Thomas C. Redman, Manager of the Fleet Services Division. There was no evidence presented to show that Mr. Redman in any way formulates, determines or effectuates labor relations policy for the County. In the absence of such evidence, the Board cannot find that the County would be prejudiced in its management of labor relations by the inclusion of the Administrative Clerk III in the bargaining unit with the other Fleet

Services Division employees. See, *Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d at 68. Therefore, the first prong of the labor nexus test is not met.

Since the first prong of the labor nexus test was not met, it is unnecessary to examine the second prong of the test. Therefore, the Board holds that the Administrative Clerk III is not a confidential employee within the meaning of the Missouri Public Sector Labor Law and the Administrative Clerk III should be included in the bargaining unit with the other Fleet Services Division employees.

ORDER

The State Board of Mediation finds that the Administrative Clerk III is not a confidential employee within the meaning of the Missouri Public Sector Labor Law. The Board further finds that the Administrative Clerk III shares a clear and identifiable community of interest with the other Fleet Services Division employees and should therefore, be included in the proposed bargaining unit. Finally, the Board finds that a unit consisting of all Fleet Services Division employees excluding management employees and supervisors is an appropriate unit. An election is ordered therein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period

immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have the International Union of Operating Engineers, Local 2 as their exclusive bargaining representative.

The County shall submit to the Chairman of the State Board of Mediation, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 23rd day of May, 2000.

STATE BOARD OF MEDIATION

(SEAL)

/s/ John A. Birch
John A. Birch, Chairman

/s/ LeRoy Kraemer
LeRoy Kraemer, Employee Member

/s/ Lois VanderWaerd
Lois VanderWaerd, Employer Member